

EXHIBIT G

Steven A. Haist, M.D.

Thomas vs. ECFMG, et al.

January 17, 2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

MATHEW THOMAS, JR. : CIVIL ACTION
vs. :
ECFMG, et al. : NO. 13-3946

Friday, January 17, 2014

COPY

Oral deposition of STEVEN A. HAIST, M.S., M.D.,
held at NATIONAL BOARD OF MEDICAL EXAMINERS, 3750
Market Street, Philadelphia, Pennsylvania, beginning at
approximately 11:45 a.m., on the above date, before
LANCE A. BRUSILOW, Registered Professional Reporter,
Approved Reporter for the United States District Court,
and Notary Public, there being present.

brusilow + associates
255 South 17th Street
Suite 1503
Philadelphia, PA 19103
215.772.1717
www.brusilow.com

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<p>APPEARANCES</p> <p>SOUTHERN MEDICAL GROUP BY: MATTHEW THOMAS, JR., M.D. 326 East 149th Street Bronx, NY 10541 ph: 718.585.6262 (mthomas1@sbhny.org) Counsel for Plaintiff</p> <p>MORGAN, LEWIS & LEWIS, LLP BY: ELISA P. McENROE, ESQUIRE 1701 Market Street Philadelphia, PA 19103-2921 ph: 215.963.5917 (emcenroe@morganlewis.com) Counsel for ECFMG and William C. Kelly, M.S.</p> <p>HAMBURG & GOLDEN, P.C. BY: MAUREEN P. HOLLAND, ESQUIRE 1601 Market Street, Suite 3310 Philadelphia, PA 19103-143 ph: 215.255.8584 (hollandmp@hamburg-golden.com) Counsel for Gerard F. Dillon, M.D., Steven Haist, M.D. and Janet Carson, Esquire</p> <p>NATIONAL BOARD OF MEDICAL EXAMINERS BY: SUZANNE WILLIAMS, ESQUIRE 3750 Market Street Philadelphia, PA 19104-3102 Ph: 215.590.9538 (swilliams@nbme.org) Counsel for NBME</p>	<p>Page 2</p>	<p>1 which I did. 2 I owed Uncle Sam, the government, National 3 Health Service Corps, two years and paid that back, 4 then started on faculty at the University of Kentucky 5 in 1987. 6 Q. While you were on faculty were you a 7 practicing physician as well? 8 A. Oh, yes. 9 Q. As a faculty member, what were you teaching? 10 A. Let's see. I ran three different 11 physical-diagnosis courses. We went through a 12 curriculum revision in there over the first nine years. 13 On faculty, so I started interviewing physical 14 diagnosis, physical examinations, and sort of early 15 clinical reasoning. 16 I ran the four-week internal medicine 17 primary-care clerkship for six years, and I was 18 associate program director and residency program 19 director for five years, and the associate program 20 director was for four or five years before that. 21 Let's see if there were any other main 22 education -- I started the standardized patient program 23 at the University of Kentucky and was involved with a 24 lot of different assessments in internal medicine; had</p>	<p>Page 4</p>
<p>1 (It is hereby agreed by and among 2 counsel that signing, sealing, certification and 3 filing are waived; and that all objections, except 4 as to the form of the question, are reserved until 5 the time of trial)</p> <p>6 STEVEN A. HAIST, M.D., M.S., having 7 been first duly sworn, was examined and testified 8 as follows:</p> <p>9 (EXAMINATION)</p> <p>10 BY DR. THOMAS:</p> <p>11 Q. Good morning, Dr. Haist. How are you?</p> <p>12 A. Fine, thanks.</p> <p>13 Q. Just for the record, could you please say your 14 full name?</p> <p>15 A. Yes: Steven A. Haist.</p> <p>16 Q. Would you spell your last name, please?</p> <p>17 A. H-a-i-s-t.</p> <p>18 Q. Could you please tell me your educational 19 training?</p> <p>20 A. I went to Center College and got a BS in 21 Chemistry in 1977 with the University of Kentucky 22 Medical School. I graduated in 1981. I did an 23 internal medicine residency at the same institution, 24 and was asked to stay on as chief resident in '84/'85,</p>	<p>Page 3</p>	<p>1 a very junior faculty member running the internal 2 medicine clerkship; and I was in charge of the 3 evaluation of the clerkship and worked with him for the 4 first three or four years that he was doing it, help 5 him get his legs under him.</p> <p>6 Q. Currently are you working as a practicing 7 physician?</p> <p>8 A. No; I was, up until a year and a half ago.</p> <p>9 Q. What do you do now?</p> <p>10 A. Same thing I was doing since 2008: I work in 11 test development services at the National Board of 12 Medical Examiners.</p> <p>13 Q. Test exam services?</p> <p>14 A. TDS: Test Development Services.</p> <p>15 Q. Can you please tell me what your role is?</p> <p>16 A. Vice-president for test development services.</p> <p>17 Q. What are your job responsibilities under that 18 title?</p> <p>19 A. Overseeing the development of test materials 20 for multiple different examinations.</p> <p>21 Q. When were you first hired by NBME?</p> <p>22 A. July 7, 2008.</p> <p>23 Q. Before coming on to NBME as the test 24 development services VP, did you do any other work for</p>	<p>Page 5</p>

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<p>1 NBME?</p> <p>2 A. Yes: I was a committee member for fourteen</p> <p>3 years.</p> <p>4 Q. Which committee, please?</p> <p>5 A. Committees: I was initially on the</p> <p>6 introduction to clinical medicine committee for three</p> <p>7 years; after that I was on the behavioral science</p> <p>8 committee for three years, then I was on the physiology</p> <p>9 committee for eight, the last four as its chair; and in</p> <p>10 there I was also on a number of different review</p> <p>11 committees, interdisciplinary review committees for</p> <p>12 Step 1 and I was on the Step 1 committee, I believe,</p> <p>13 the last two years before I came to work here.</p> <p>14 Q. When you say "the Step 1 committee," what was</p> <p>15 your role on that committee?</p> <p>16 A. Committee member.</p> <p>17 Q. What was the responsibility of that committee?</p> <p>18 A. They oversee Step 1.</p> <p>19 Q. Anything specific that comes before that</p> <p>20 committee --</p> <p>21 A. It depends. Can be. Everything from tests to</p> <p>22 committee members to test-specification changes, to any</p> <p>23 number of things.</p> <p>24 Q. How often would you say that committee meets?</p>	<p>Page 6</p> <p>1 Q. And Step 2 CK is every question that is taken</p> <p>2 on an exam date used toward the final score?</p> <p>3 A. No.</p> <p>4 Q. How much say does your department get in which</p> <p>5 questions are used in the final score?</p> <p>6 A. Zero.</p> <p>7 Q. Is there an ability for all questions to be</p> <p>8 used in the final score?</p> <p>9 MS. HOLLAND: Objection, calls for</p> <p>10 speculation. You can answer.</p> <p>11 THE WITNESS: Okay. A number of</p> <p>12 questions are pre-test, so all questions are</p> <p>13 pre-tested before they end up on a live</p> <p>14 examination.</p> <p>15 BY DR. THOMAS:</p> <p>16 Q. So, could you please explain that pre-test</p> <p>17 category?</p> <p>18 A. That they had never been seen on a live</p> <p>19 examination before, and they go on the examination to</p> <p>20 get statistics.</p> <p>21 Q. Approximately how many questions on an exam</p> <p>22 would be pre-test?</p> <p>23 A. How vague do you want me to be? Because we</p> <p>24 don't tell anybody that.</p>
<p>1 A. Twice a year.</p> <p>2 Q. During your membership on these committees</p> <p>3 were you an NBME employee?</p> <p>4 A. No.</p> <p>5 Q. Do you have any certifications or licenses</p> <p>6 outside of the degrees you told me?</p> <p>7 A. I'm board certified in internal medicine.</p> <p>8 I've got a Masters in Medical Education. I don't think</p> <p>9 there is anything else. I mean, I've got state medical</p> <p>10 licenses in Kentucky and Pennsylvania.</p> <p>11 Q. Do you have any certifications, licenses or</p> <p>12 background in statistics?</p> <p>13 A. Not outside what my masters degree had. I had</p> <p>14 four or five courses in statistics.</p> <p>15 Q. Under your current title as VP of test</p> <p>16 development services, could you tell me specifically</p> <p>17 what role you play in the Step 2 CK exam?</p> <p>18 A. The staff of test development services runs</p> <p>19 the committees where the questions are generated and</p> <p>20 the committees where the questions are reviewed, and my</p> <p>21 staff run the computer software that puts the</p> <p>22 examination together. And we, you know -- I guess</p> <p>23 that's pretty much it in a nutshell, involvement with</p> <p>24 Step 2 CK.</p>	<p>Page 7</p> <p>1 MS. HOLLAND: Yes, objection. That's</p> <p>2 privileged information. I'm going to instruct you</p> <p>3 not to answer that question.</p> <p>4 DR. THOMAS: Okay.</p> <p>5 BY DR. THOMAS:</p> <p>6 Q. What is the process once you pre-test these</p> <p>7 questions to become permanent questions?</p> <p>8 A. The question is statistics-generated and is</p> <p>9 has to meet certain statistical criteria, including</p> <p>10 positive correlation with the rest of the examination.</p> <p>11 The question is then reviewed by the interdisciplinary</p> <p>12 review committee for Step 2.</p> <p>13 It's got at least one specialist from each of</p> <p>14 the major disciplines -- two internal medicine, one</p> <p>15 surgery, one psychiatry, one OB/GYN, and one</p> <p>16 pediatrician -- to review the questions, including the</p> <p>17 pre-test ones, and approve them for live use.</p> <p>18 Q. How long would a test question be pre-test --</p> <p>19 how long would it stay as a pre-test question before it</p> <p>20 comes to the . . .</p> <p>21 A. One year.</p> <p>22 Q. One year. The statistics that are run on</p> <p>23 these questions, is it a person or a program that runs</p> <p>24 the statistics?</p>
<p>1 NBME?</p> <p>2 A. Yes: I was a committee member for fourteen</p> <p>3 years.</p> <p>4 Q. Which committee, please?</p> <p>5 A. Committees: I was initially on the</p> <p>6 introduction to clinical medicine committee for three</p> <p>7 years; after that I was on the behavioral science</p> <p>8 committee for three years, then I was on the physiology</p> <p>9 committee for eight, the last four as its chair; and in</p> <p>10 there I was also on a number of different review</p> <p>11 committees, interdisciplinary review committees for</p> <p>12 Step 1 and I was on the Step 1 committee, I believe,</p> <p>13 the last two years before I came to work here.</p> <p>14 Q. When you say "the Step 1 committee," what was</p> <p>15 your role on that committee?</p> <p>16 A. Committee member.</p> <p>17 Q. What was the responsibility of that committee?</p> <p>18 A. They oversee Step 1.</p> <p>19 Q. Anything specific that comes before that</p> <p>20 committee --</p> <p>21 A. It depends. Can be. Everything from tests to</p> <p>22 committee members to test-specification changes, to any</p> <p>23 number of things.</p> <p>24 Q. How often would you say that committee meets?</p>	<p>Page 8</p> <p>1 Q. And Step 2 CK is every question that is taken</p> <p>2 on an exam date used toward the final score?</p> <p>3 A. No.</p> <p>4 Q. How much say does your department get in which</p> <p>5 questions are used in the final score?</p> <p>6 A. Zero.</p> <p>7 Q. Is there an ability for all questions to be</p> <p>8 used in the final score?</p> <p>9 MS. HOLLAND: Objection, calls for</p> <p>10 speculation. You can answer.</p> <p>11 THE WITNESS: Okay. A number of</p> <p>12 questions are pre-test, so all questions are</p> <p>13 pre-tested before they end up on a live</p> <p>14 examination.</p> <p>15 BY DR. THOMAS:</p> <p>16 Q. So, could you please explain that pre-test</p> <p>17 category?</p> <p>18 A. That they had never been seen on a live</p> <p>19 examination before, and they go on the examination to</p> <p>20 get statistics.</p> <p>21 Q. Approximately how many questions on an exam</p> <p>22 would be pre-test?</p> <p>23 A. How vague do you want me to be? Because we</p> <p>24 don't tell anybody that.</p>
<p>1 A. Twice a year.</p> <p>2 Q. During your membership on these committees</p> <p>3 were you an NBME employee?</p> <p>4 A. No.</p> <p>5 Q. Do you have any certifications or licenses</p> <p>6 outside of the degrees you told me?</p> <p>7 A. I'm board certified in internal medicine.</p> <p>8 I've got a Masters in Medical Education. I don't think</p> <p>9 there is anything else. I mean, I've got state medical</p> <p>10 licenses in Kentucky and Pennsylvania.</p> <p>11 Q. Do you have any certifications, licenses or</p> <p>12 background in statistics?</p> <p>13 A. Not outside what my masters degree had. I had</p> <p>14 four or five courses in statistics.</p> <p>15 Q. Under your current title as VP of test</p> <p>16 development services, could you tell me specifically</p> <p>17 what role you play in the Step 2 CK exam?</p> <p>18 A. The staff of test development services runs</p> <p>19 the committees where the questions are generated and</p> <p>20 the committees where the questions are reviewed, and my</p> <p>21 staff run the computer software that puts the</p> <p>22 examination together. And we, you know -- I guess</p> <p>23 that's pretty much it in a nutshell, involvement with</p> <p>24 Step 2 CK.</p>	<p>Page 9</p> <p>1 MS. HOLLAND: Yes, objection. That's</p> <p>2 privileged information. I'm going to instruct you</p> <p>3 not to answer that question.</p> <p>4 DR. THOMAS: Okay.</p> <p>5 BY DR. THOMAS:</p> <p>6 Q. What is the process once you pre-test these</p> <p>7 questions to become permanent questions?</p> <p>8 A. The question is statistics-generated and is</p> <p>9 has to meet certain statistical criteria, including</p> <p>10 positive correlation with the rest of the examination.</p> <p>11 The question is then reviewed by the interdisciplinary</p> <p>12 review committee for Step 2.</p> <p>13 It's got at least one specialist from each of</p> <p>14 the major disciplines -- two internal medicine, one</p> <p>15 surgery, one psychiatry, one OB/GYN, and one</p> <p>16 pediatrician -- to review the questions, including the</p> <p>17 pre-test ones, and approve them for live use.</p> <p>18 Q. How long would a test question be pre-test --</p> <p>19 how long would it stay as a pre-test question before it</p> <p>20 comes to the . . .</p> <p>21 A. One year.</p> <p>22 Q. One year. The statistics that are run on</p> <p>23 these questions, is it a person or a program that runs</p> <p>24 the statistics?</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. A program. 2 Q. Can you tell me the name of the program? 3 MS. HOLLAND: Objection, relevance. 4 You can answer. 5 THE WITNESS: I'm not sure. I think 6 it's SPSS, but I'm not sure. 7 BY DR. THOMAS: 8 Q. Do you know the methodology of analytics that 9 are done by the program? 10 A. Yes. I mean, it's percent correct and a 11 reliability coefficient. 12 Q. When determining if these questions are going 13 to go live, do you go by the report given by the 14 program? 15 A. I'm not sure what you're asking. 16 Q. Is there a criteria that has to be met for the 17 committee to say "this should go live" or is it a 18 committee decision? 19 A. It's a committee decision. 20 Q. How much background do you have in analytics 21 to understand a relative coefficient? 22 A. Reliability coefficient. 23 Q. Or reliability coefficient. 24 A. Four or five courses, and we have a</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Could you identify what kind of material it 2 was? 3 A. They were test questions. 4 Q. Can you identify, was it test questions with 5 answers or just questions? 6 A. Well, test questions with answers. 7 Q. Do you know -- 8 A. At least a lot of the ones that I saw were. 9 Q. Can you tell me approximately how many 10 questions you saw? 11 A. Hundreds. I don't know an exact number, but 12 it's several hundred. 13 Q. Is "several hundred" closer to under 500, or 14 is several hundred closer to a thousand? 15 A. I don't know. I don't know. It was in 16 multiple different batches over a period of time. 17 Q. Can you tell me in what format they were given 18 to you? 19 A. Paper copies, photocopies. 20 Q. Were you given anything electronic? 21 A. I don't believe so. 22 Q. Once given those questions, what was the role 23 you were supposed to play with them? 24 A. I reviewed, you know, a number of them and</p>
<p style="text-align: right;">Page 11</p> <p>1 psychometrician in test development services that works 2 with us as well as psychometricians in scoring 3 services. 4 Q. And are all of them certified in analytics? 5 A. I do not believe there is a certification for 6 psychometricians. 7 Q. Is there -- 8 A. But they all have Ph.D.s in psychometrics. 9 Q. And do they have any certifications, degrees 10 in statistics? 11 A. I don't think there is any certification in 12 statistics, or at least not that I'm aware of. 13 Q. Is there a degree, any degree background? 14 A. Yes: They all have Ph.D.s in a 15 psychometric-related field. 16 Q. Okay. 17 A. Which is essentially statistics. 18 Q. Did you have any direct involvement in the 19 investigation with Optima University? 20 A. I was asked to look at materials after the 21 fact. 22 Q. Do you know where those materials came from? 23 A. Where they came from. They came from the 24 investigation. I don't know who had them.</p>	<p style="text-align: right;">Page 13</p> <p>1 then we actually would run a program to look for 2 matches to our item pool. 3 Q. And what program was that? 4 MS. HOLLAND: Objection, relevance. 5 You can answer. 6 THE WITNESS: I'm not sure which it is. 7 BY DR. THOMAS: 8 Q. Who entered the questions into the program? 9 MS. HOLLAND: Objection to relevance. 10 You can answer. 11 THE WITNESS: Staff. 12 BY DR. THOMAS: 13 Q. Did anyone oversee to reconcile that it was 14 correctly entered? 15 A. That's something that we don't really -- we 16 don't need to do. 17 Q. Is the answer yes or no? 18 A. I'm sorry? 19 Q. The question is, did anyone reconcile to make 20 sure it was correctly entered. 21 A. Not that I'm aware of. 22 Q. Did you do any direct entry of questions into 23 the program? 24 A. No.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q. Approximately how many staff would you say 2 were involved in entering the data? 3 A. It was over a period of time. I'm not really 4 sure. There were several, but not many. 5 Q. When they entered these questions, was it just 6 the questions or the questions and the answer choices? 7 A. It was usually both. It was all the data that 8 was available. 9 Q. Once entered, do you know how many came up as 10 a match? 11 A. I don't know. 12 Q. What would you consider a match? 13 A. Where the content was very similar and there 14 were a number of them that were word-for-word -- 15 actually most of them were word-for-word other than 16 maybe a comma or period, including the option choices. 17 Q. If a question was not word-for-word but you 18 say the content was similar, would you consider that a 19 match? 20 A. No, we would consider that a possible. 21 Q. A possible. Did you degree that possibility, 22 meaning did you give a higher weight? 23 A. No. 24 Q. So, it was either possible or a match or not a</p>	<p style="text-align: right;">Page 16</p> <p>1 question, then that's a different question. I 2 won't object to that question. 3 DR. THOMAS: Okay. 4 BY DR. THOMAS: 5 Q. So, when you say there are difficult forms, 6 are specific forms in specific countries or regions, or 7 are they anywhere within the world? 8 A. Anywhere. 9 Q. If you found that a form was found to be in 10 this database you received, what happened to those 11 questions afterwards? 12 A. They were taken out of the live pool. 13 Q. Just clarify: Several hundred questions that 14 may have come up as -- 15 A. Oh, no, it was more than that. I said several 16 hundred I looked at. 17 Q. Let me rephrase -- 18 A. There were several thousand questions. 19 Q. So, how many questions would you say you were 20 given to review, you, your staff, your department? 21 A. That's a different question. Several 22 thousand. 23 Q. Can you give me more definite number? 24 MS. HOLLAND: Objection. I'm going to</p>
<p style="text-align: right;">Page 15</p> <p>1 match. 2 A. That was how I was looking at the stuff. 3 Q. If a question came back as a match, what would 4 be the next step? 5 A. We were just identifying the questions as 6 whether they were or not, and then they went to look -- 7 they went to look to see if they were all on one 8 examination because there are multiple forms of the 9 exam. 10 Q. Did you find -- 11 A. Yes. 12 Q. -- that they were found -- 13 A. Yes, multiple forms of the exam. 14 Q. Are multiple forms at the specific location? 15 MS. HOLLAND: I'm going to object to 16 the question on the basis of relevance, unless Dr. 17 Thomas can articulate how this is relevant to his 18 claim. 19 DR. THOMAS: I believe in the Optima 20 investigation they claim that they were stolen 21 abroad, so I'm trying to see whether questions 22 here are seen abroad or questions are only seen in 23 the US. 24 MS. HOLLAND: If you want to ask that</p>	<p style="text-align: right;">Page 17</p> <p>1 instruct the witness not to answer unless Dr. 2 Thomas can articulate why it's relevant. 3 DR. THOMAS: Was there a difference 4 between 2,000 questions and several thousand 5 questions. 6 MS. McENROE: I understand -- 7 DR. THOMAS: Or several -- I just want 8 to know what he means by "several." 9 MS. McENROE: But again, the relevance 10 to your particular claim is -- 11 DR. THOMAS: It goes back to your saying 12 that my questions were matched up against this 13 bank, then I want to know exactly how big of a 14 pool you had to match up my exam to. 15 MS. HOLLAND: I'm going to instruct the 16 witness not to answer. I don't believe that's 17 relevant at all. 18 DR. THOMAS: The relevance also comes 19 because I've claimed multiple times that there 20 were not many questions when I was there, so that 21 would be my other thing. But if you don't want 22 him to answer, that's fine. 23 BY DR. THOMAS: 24 Q. When given these questions, was there a date</p>

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<p style="text-align: right;">Page 18</p> <p>1 stamp?</p> <p>2 MS. HOLLAND: Objection, vague.</p> <p>3 A. I don't remember.</p> <p>4 Q. Based on what you were given, could you tell</p> <p>5 when a question was added to the database that they got</p> <p>6 the questions from?</p> <p>7 A. No.</p> <p>8 Q. So, you were saying before, if a question came</p> <p>9 up as a match, what was the next step?</p> <p>10 A. I said it was removed from the live pool...</p> <p>11 Q. Approximately --</p> <p>12 A. ...so it wouldn't be used again.</p> <p>13 Q. Approximately how many questions were removed</p> <p>14 from the live pool?</p> <p>15 A. Several thousand.</p> <p>16 Q. And approximately when were they removed from</p> <p>17 the live pool?</p> <p>18 A. I have to go back and look. 2009? I'm not</p> <p>19 sure the month or year. It was in that time frame</p> <p>20 between eight and ten.</p> <p>21 Q. Do you remember when you were first given the</p> <p>22 questions to review, or your staff?</p> <p>23 A. No, I don't.</p> <p>24 Q. Do you remember approximately what year?</p>	<p style="text-align: right;">Page 20</p> <p>1 sure.</p> <p>2 Q. Based on the data you received regarding</p> <p>3 matches, how was that then related to students that</p> <p>4 went to Optima University?</p> <p>5 MS. HOLLAND: Objection, vague.</p> <p>6 Q. Are you aware of the investigation with Optima</p> <p>7 University?</p> <p>8 A. Yes.</p> <p>9 Q. Are you aware of the allegations against</p> <p>10 students at Optima University?</p> <p>11 A. Not specifics.</p> <p>12 Q. What is your understanding of the questions</p> <p>13 that they used in the Optima University test bank?</p> <p>14 MS. HOLLAND: Objection, vague.</p> <p>15 Q. What is your understanding as to why you were</p> <p>16 testing the questions you received?</p> <p>17 A. Because there was some thought that they were</p> <p>18 stolen copyrighted material.</p> <p>19 Q. So, if they were thought to be stolen or</p> <p>20 copyrighted --</p> <p>21 A. They were copyrighted, stolen copyrighted</p> <p>22 material.</p> <p>23 Q. If they were stolen copyrighted material, what</p> <p>24 then were the steps taken for students who went to</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Similar time period.</p> <p>2 Q. Would you say early 2009 or late 2009?</p> <p>3 A. I don't remember. It was ongoing and could</p> <p>4 have spanned early and late 2009.</p> <p>5 Q. If questions were found at Optima University,</p> <p>6 who would be the first to review them?</p> <p>7 MS. HOLLAND: Objection, vague.</p> <p>8 Q. If questions were found at Optima University,</p> <p>9 would your department be the first to determine whether</p> <p>10 they were actually USMLE questions?</p> <p>11 A. We were part of the process. They weren't the</p> <p>12 first ones ever to touch the question, no.</p> <p>13 Q. Not touch the questions, but in order to</p> <p>14 determine whether they were a match, which</p> <p>15 department --</p> <p>16 A. It started in test development.</p> <p>17 Q. When did the testing finish?</p> <p>18 MS. HOLLAND: Objection, vague.</p> <p>19 Q. You received thousands of questions that were</p> <p>20 said to come from Optima University and they were</p> <p>21 matched up through a program. When did your review</p> <p>22 process get completed for all questions?</p> <p>23 A. I'm not sure what the exact date was. I want</p> <p>24 to say it was whenever -- I don't know. 2010. I'm not</p>	<p style="text-align: right;">Page 21</p> <p>1 Optima University?</p> <p>2 A. That is not part of my job. I have no idea.</p> <p>3 Q. Students were given data in writing regarding</p> <p>4 their exams versus questions that were found in the</p> <p>5 Optima University data bank: Were you involved in that</p> <p>6 process or your department involved in that process at</p> <p>7 all?</p> <p>8 A. No.</p> <p>9 Q. Would you know who was involved in that</p> <p>10 process or who headed that process?</p> <p>11 A. I probably know a few people that were</p> <p>12 involved in it, like Dr. Dillon, who I think is on this</p> <p>13 afternoon, but I'm not sure about individuals. He's</p> <p>14 the head of USMLE, so I'm sure he was involved somehow.</p> <p>15 Q. Were you ever contacted or asked to review the</p> <p>16 examination taken by Mathew Thomas on December 31st,</p> <p>17 2007?</p> <p>18 A. Yes. I was asked by Dr. Dillon to look and</p> <p>19 see if that examination was similar to the examination</p> <p>20 that was taken also in 2007 and compare those two</p> <p>21 examinations.</p> <p>22 Q. Were you ever asked to review Dr. Thomas' exam</p> <p>23 Step 2 CK on December 31st, 2007 with regard to his</p> <p>24 questions matching the Optima test bank?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. No.</p> <p>2 Q. Were you asked to be involved in any student 3 from Optima University --</p> <p>4 MS. HOLLAND: Objection as to the 5 relevance.</p> <p>6 DR. THOMAS: Because if he goes down 7 that line, I would go on questioning. If he says 8 no, then I'm done with my line of questioning.</p> <p>9 MS. HOLLAND: What would the relevance 10 be with regard to any other student?</p> <p>11 DR. THOMAS: Because that would give 12 knowledge as to the assessment done on those 13 questions.</p> <p>14 MS. HOLLAND: Okay, the witness can 15 answer.</p> <p>16 THE WITNESS: I don't recall looking at 17 any particular other student's, you know, 18 questions.</p> <p>19 DR. THOMAS: All right.</p> <p>20 BY DR. THOMAS:</p> <p>21 Q. Just to clarify: When a question came up as a 22 match and when it's then removed from the live bank, 23 who made the determination to remove it from the bank?</p> <p>24 A. It was a multi-unit decision.</p>	<p style="text-align: right;">Page 24</p> <p>1 THE WITNESS: Is it a committee of -- 2 I'm not sure if it's "a USMLE committee." It's 3 made up of ECFMG, NBME and Federation State 4 Medical Boards. And I'm not sure, you know, who 5 owns it or . . .</p> <p>6 BY DR. THOMAS:</p> <p>7 Q. So, who would do the final signoff on taking a 8 live question and making it -- take it out of the live 9 bank?</p> <p>10 A. Probably it would be test development and 11 assessment -- USMLE assessment programs. That would 12 not be something that would be done by governance.</p> <p>13 Q. So, any question that was taken out of the 14 live bank, would you have to be the one to sign off on 15 removing it since you're in test development?</p> <p>16 A. Actually, I'm trying to remember when it 17 switched, because part of the time in there -- I was 18 associate vice-president of test development when I 19 first started, then I became vice-president in January 20 of 2010.</p> <p>21 Those decisions were probably -- weren't made 22 by me but were made by, you know, the same person that 23 was or had my position then.</p> <p>24 Q. Do you remember who that person was?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Was there a final person who decided as a 2 final. . .</p> <p>3 A. No, I don't believe so.</p> <p>4 Q. Was there a committee that made a decision?</p> <p>5 A. There was a lot of input from scoring 6 services, from test development and from USMLE. I 7 guess the final call is USMLE since they oversee the 8 management.</p> <p>9 Q. So, from the NBME standpoint as test 10 development and USMLE as the test itself, what is the 11 relationship?</p> <p>12 A. The USMLE is jointly owned by the Federation 13 of State Medical Boards and the National Board of 14 Medical Examiners, and it's one of the test programs 15 that we participate in.</p> <p>16 Q. So, USMLE has final say to take the question 17 out of the live --</p> <p>18 A. Well, they have final say with anything that 19 goes on to -- well, governance does, with their exam. 20 It could be a step committee; it could be a composite 21 committee.</p> <p>22 Q. For NBME or USMLE?</p> <p>23 A. It would be USMLE for step committee, and 24 composite committee is a --</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes: David Swanson.</p> <p>2 Q. For the questions that came from the Optima 3 test bank, how many would you say you specifically 4 signed off on removing from the live bank?</p> <p>5 A. I don't think I signed off on any of those or 6 if they were actually removed before mid-January of 7 2010. I reviewed questions, but I didn't, you know, 8 sign off on having them removed.</p> <p>9 Q. From the time you were given the questions to 10 review until the time they were taken out of the live 11 bank, can you approximate how long that would take?</p> <p>12 A. Could be as short as, you know, a month; could 13 be as long as six months, depending on how long it was 14 taking to do the matches.</p> <p>15 If we only had one question to look at, we can 16 probably do that in less than a day. But as I said, 17 there were a lot more than one or two questions; there 18 were thousands.</p> <p>19 Q. So, would you wait for the full thousand to be 20 done to remove a question, or is it as you get a match 21 you started the process?</p> <p>22 A. I think they were looked at in batches.</p> <p>23 Q. In batches, okay. Are you aware of how many 24 batches you received?</p>

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<p style="text-align: right;">Page 26</p> <p>1 MS. HOLLAND: Objection, irrelevant. 2 You can answer. 3 THE WITNESS: No. There were, as I 4 said, several thousand questions. They were not 5 all done at the same time. 6 BY DR. THOMAS: 7 Q. If you received questions that were possible 8 matches, did NBME or USMLE take any steps to suspend 9 those questions until they took them out of the live 10 pool permanently? 11 A. No, I don't believe so. 12 Q. Is it safe to say, then, that questions that 13 may have come and were being reviewed as a match would 14 stay in the live pool as long as six months after you 15 were notified of them? 16 A. Well, they wouldn't get removed before that 17 because we wouldn't know that they were in our pool or 18 not. 19 There were questions, if I'm not mistaken, 20 that were actually from the self-assessment practice 21 questions, then questions that are on live examinations 22 both for Step 1 and for Step 2 CK. 23 Q. The self-assessment questions, could you 24 please explain what those are?</p>	<p style="text-align: right;">Page 28</p> <p>1 MS. HOLLAND: I'm going to instruct the 2 witness not to answer that question. 3 BY DR. THOMAS: 4 Q. Would you say there were many questions that 5 were not part of your live pool in the questions you 6 reviewed from the Optima bank? 7 A. The vast majority were on the live pool. I 8 don't remember what percentage, but it was a sizeable 9 percent. It was a vast majority. 10 Q. Would you be able to give those percentages? 11 A. Oh, not without going upstairs and trying to 12 dig up or have somebody else dig up the files on the 13 number of questions that were viewed and how many were 14 matches. 15 DR. THOMAS: I would like to put on 16 record that I would like that information. 17 MS. HOLLAND: Okay. 18 MS. McENROE: Let's take a quick break. 19 DR. THOMAS: Fine. 20 (A brief recess was taken) 21 MS. HOLLAND: We're back on the record. 22 For the protection of the integrity of the 23 examination -- and as you're aware, the test 24 materials are all copyrighted -- I'm going to</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Those are what it says: Students can take 2 self-assessment examinations, and I guess there are 3 practice exams for Steps 2 and 3 as well. They can take 4 questions and get some feedback as to whether they got 5 the right answer or not. 6 Q. Who puts out those self-assessment questions? 7 A. The NBME. 8 Q. Is there a financial cost for those questions? 9 A. Yes. I'm not sure what they charge per exam. 10 Q. Are those questions still live questions? 11 A. No. 12 Q. Could different variations of those questions 13 be live questions? 14 A. No. 15 Q. Who decides if a question will be taken out 16 and put on the self-assessment exam? 17 MS. HOLLAND: Objection, relevance. 18 DR. THOMAS: In my hearing originally I 19 said that there were self-assessment exams and 20 live exams. 21 MS. HOLLAND: What does that have to do 22 with the claims? 23 DR. THOMAS: I just want to know who 24 makes them.</p>	<p style="text-align: right;">Page 29</p> <p>1 object to any further questions that pertain to 2 test content as well as the ongoing investigation 3 into Optima University. 4 Because that investigation is underway, 5 I'm going to instruct my witnesses not to answer 6 any questions about the size of the question bank 7 or anything pertaining to the investigation that's 8 still going on. 9 And based particularly on your 10 testimony that you gave at your deposition on 11 Friday, the 10th of January, that you're still in 12 contact with people from Optima University, we 13 have particular concerns about the integrity of 14 the tests. 15 So, for that reason I'm going to 16 instruct the witness not to answer your previous 17 question. 18 DR. THOMAS: My understanding is that 19 the case against Optima University is completed 20 and a verdict was already put against them, that 21 there is no open investigation. 22 MS. HOLLAND: Well, I am going to 23 instruct my witness not to answer and we'll move 24 on from there.</p>

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<p style="text-align: right;">Page 30</p> <p>1 DR. THOMAS: That's fine. 2 BY DR. THOMAS: 3 Q. Dr. Haist, again, when were you first told 4 about questions at Optima University? 5 MS. HOLLAND: Objection. You can 6 answer that question. 7 THE WITNESS: Sometime -- I think it 8 was spring 2008. 9 BY DR. THOMAS: 10 Q. Before you said 2009. Was it 2009 or 2008? 11 A. That I first found out about it or first heard 12 about it? They're two different questions. 13 Q. Given questions from the department. 14 A. That's different. I heard -- it was either 15 late '08 or early '09 that I actually started -- no, it 16 wouldn't have been. It would have been '09. 17 I didn't start until early July. It was 18 either spring of '09 or mid '09 that I first heard 19 about it and shortly after that, I guess, saw some of 20 the questions. 21 Q. Your department would be the first to do the 22 matching of questions? 23 MS. HOLLAND: Objection, asked and 24 answered.</p>	<p style="text-align: right;">Page 32</p> <p>1 I previously stated. 2 BY DR. THOMAS: 3 Q. Do you know the process that was taken to 4 match student questions to the Optima University test 5 bank? 6 MS. HOLLAND: Objection. I'm going to 7 instruct the witness not to answer on the basis 8 that I previously stated. 9 BY DR. THOMAS: 10 Q. Do you know the process that a student takes 11 if they went before a validation committee and were 12 told that their test was not validated? 13 MS. HOLLAND: Objection, calls for 14 speculation. 15 DR. THOMAS: How is it speculation? I'm 16 not understanding. 17 MS. HOLLAND: Well, I don't understand 18 your question. 19 DR. THOMAS: The question is, does he 20 know the process if someone comes back saying 21 their score is still indeterminate after a 22 hearing. 23 MS. HOLLAND: Okay, you can ask him if 24 he knows.</p>
<p style="text-align: right;">Page 31</p> <p>1 BY DR. THOMAS: 2 Q. To your knowledge, before you took on the role 3 with regard to matching questions from the Optima 4 University test bank, did any other individual who may 5 have been a successor to your role do a match on any 6 questions? 7 MS. HOLLAND: Objection, that question 8 has been asked and answered. 9 DR. THOMAS: The question is whether he 10 had knowledge anyone before him did a match on the 11 questions. It's not the same when he finds out. 12 MS. HOLLAND: Dr. Thomas, the question 13 has been asked and answered. 14 DR. THOMAS: Can you please explain to 15 me when it was asked and answered? 16 MS. HOLLAND: No. 17 DR. THOMAS: Okay, I have what I need. 18 That's fine. 19 BY DR. THOMAS: 20 Q. What is your understanding of the case against 21 Optima University with regard to students and their 22 exam questions? 23 MS. HOLLAND: Objection. I'm going to 24 instruct the witness not to answer on the grounds</p>	<p style="text-align: right;">Page 33</p> <p>1 THE WITNESS: I don't know. 2 BY DR. THOMAS: 3 Q. Do you know what a validation exam is? 4 A. Yes. 5 Q. Do you know how to get to a point where a 6 student has to take a validation exam? 7 A. No. 8 Q. What is your understanding about a validation 9 exam? 10 A. Can you be more specific? I'm not quite sure 11 what you're asking me. 12 Q. Why would a student have to take a validation 13 exam? 14 A. Because there is a question of whether the 15 results from the first examination are valid. 16 Q. Do you know if a validation exam is supposed 17 to be similar to the present test forms? 18 A. It's supposed to be comparable. 19 Q. Can you define "comparable"?</p> <p>20 A. Generally the same content, similar in 21 structure. 22 Q. Structure: Could you elaborate a little bit 23 on structure? 24 A. Number of questions, prompts, those things</p>

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<p style="text-align: right;">Page 34</p> <p>1 generally. 2 Q. Length of question? Would that be part of 3 structure? 4 A. Yes, relatively speaking. 5 Q. The number of answers -- sorry. 6 A. Yes, number of answer choices, the way the 7 questions are structured. 8 Q. Are there question times such as media 9 questions? 10 A. Yes, there are. 11 Q. Can you define what a media question would be? 12 A. We call them multimedia. Usually a question 13 that requires probably Chrome or some sort of playback, 14 you know, like a video or -- yeah, like a video loop. 15 Q. Do all media questions have to have a video? 16 A. Well, they have to have some way to depict 17 whatever it is that's being shown, whether it's an 18 avatar with a heart sound or whether it's a neurologic 19 examination or whatever. 20 Q. What is the playing time on a video, standard? 21 A. The loop? On heart sound it's -- I'm not sure. 22 It's probably somewhere in the neighborhood of five 23 seconds where it will play again, but it's some short 24 period of time.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Would you say, based on your development 2 expertise in the last couple of questions, that the 3 media questions have increased over the last couple of 4 years? 5 A. No, not in the last couple years. No. 6 Q. Could you say approximately how many media 7 questions are on a Step 2 exam? 8 MS. HOLLAND: Objection again for the 9 same reason. 10 DR. THOMAS: Okay. 11 BY DR. THOMAS: 12 Q. As part of your development team, do you find 13 that media questions are comparable to straightforward, 14 factual questions in terms of time spent? 15 A. Oh, it's a little longer, but also the 16 examination in -- was it two dates, 2007 and 2011? 17 Q. Uh-huh. 18 A. The examination in 2007 was forty-six 19 questions per hour and the examination in 2011 was 20 forty-four questions per hour. 21 So, adjustments were made for changes in 22 either word length or for anything added to the 23 examination between those two times. 24 Q. How often do you change the type of questions</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Is there a maximum amount of time that a media 2 video could be? 3 A. Probably the length of a block of questions. 4 Q. Is there any -- 5 A. That would be the maximum. 6 Q. Is there a policy as to how long a specific 7 media file should be on the exam? 8 A. Not time-wise. We have -- well, actually we 9 don't have that many. We have experimented with some, 10 but we have not really had varying lengths on the exam 11 of videos. We have done some work in that area, but 12 that's one of the things that we're concerned with. 13 Q. Are media questions part of the live pool? 14 A. Well, the heart sounds. 15 Q. So, there are live questions that are media 16 questions. 17 MS. HOLLAND: Objection. For the 18 reasons I stated before about the test material 19 being copyrighted, I'm going to instruct my 20 witness not to answer. 21 DR. THOMAS: Okay. 22 BY DR. THOMAS: 23 Q. Were there media questions in 2007? 24 A. I wasn't here in 2007.</p>	<p style="text-align: right;">Page 37</p> <p>1 on the USMLE? 2 MS. HOLLAND: Objection for the reasons 3 stated before. 4 BY DR. THOMAS: 5 Q. Who develops the validation exam? 6 A. Test development. 7 Q. Is there a specific validation exam as 8 compared to a normal exam where a student comes and 9 sits for the exam? 10 A. It's built to the same specifications. It's 11 not a real common occurrence. They're built to the 12 same specs. I'm not sure of the other. 13 Q. Mathew Thomas was given an exam December 31, 14 2007 and then told to take a validation exam in 15 September 2011. 16 Were you ever asked to create a validation 17 exam that was comparable to the exam that was done four 18 years prior? 19 A. No, it was built to the specification of the 20 2011 USMLE exam. 21 Q. My question is, were you asked to create a 22 validation exam that was comparable to 2007? 23 A. It was comparable to -- no, it was comparable 24 to the 2011 USMLE exam.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. So, you're stating that the validation exam 2 was a 2011 exam. 3 A. Yes, because anyone passing an examination in 4 2011 had to pass the 2011 examination specifications. 5 Q. When was the first you were contacted 6 regarding Mathew Thomas' validation? 7 A. I don't know. 8 Q. Was it before or after the exam had taken 9 place? 10 A. My unit would have had to have been before. 11 Me personally, I don't remember. 12 Q. Who in your unit would have been contacted? 13 A. I'm not sure. 14 Q. What would be the protocol for contacting your 15 department for a validation exam? 16 A. Somebody in USMLE would have contacted 17 probably a managing editor of the particular step, but 18 I'm not sure. 19 Q. Would you be able to say who the manager was 20 at that time? 21 A. Yes: I think it was June Farrell, but I'm not 22 positive. 23 Q. What would that manager do as his or her next 24 step?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Could you please define "specifications" for 2 me? 3 A. Questions from similar -- or number of 4 questions and similar question content by organ system, 5 by gender, etcetera. 6 Q. Could you elaborate on that word, "content"? 7 A. Cardiovascular disease, hypertension 8 treatment. 9 Q. So, would you say that a pharmacological 10 question on treatment should also be found on the 11 validation exam to make them comparable, or are you 12 saying that cardiovascular treatment in general is the 13 overall topic and they could ask either pharma or 14 physio or patho regarding that topic? 15 A. I think you better. . . 16 MS. HOLLAND: Yes, I'm going to object 17 for the reasons that we stated before. The way 18 the test is corrected is. . . 19 DR. THOMAS: I'm not asking about the 20 questions. I'm asking about comparability, which 21 is a big question of mine for the 2007 exam, and 22 content was a question I questioned in my 23 deposition. 24 So, I'm asking with regard to him to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. I'm not sure. 2 Q. If a student has to take a validation exam, is 3 it standard protocol to notify your department? 4 A. If another examination has to be built, the 5 answer to that would be yes, because the only place an 6 exam is going to be built is in test development. 7 Q. If a student has to take a validation exam and 8 they go to the test center, is it preset for them to 9 get that validation exam? 10 MS. HOLLAND: Objection. For the 11 reasons I stated before, I'm going to instruct the 12 witness not to answer. 13 DR. THOMAS: Okay. 14 BY DR. THOMAS: 15 Q. You stated before that Dr. Dillon asked you to 16 compare the 2007 exam with the 2011 exam, yes? 17 A. Correct. 18 Q. What's the criteria you use to determine if 19 tests are comparable? 20 A. Go through the specifications on how the two 21 examinations were built. 22 Q. What criteria would you say, in terms of how 23 they were built, would make a test comparable? 24 A. Similar specifications.</p>	<p style="text-align: right;">Page 41</p> <p>1 clarify the word "content" because it is in his 2 report or his response to Dr. Dillon's request to 3 him. 4 MS. HOLLAND: Do you want to draw his 5 attention to the report? 6 DR. THOMAS: I can do that. I don't 7 have copies, so I'm going to have to. . . 8 MS. HOLLAND: This is the third page. 9 DR. THOMAS: Thank you for that. 10 BY DR. THOMAS: 11 Q. You have an email in front of you from Amy 12 Bouno to yourself? 13 A. Yes. 14 MS. HOLLAND: Do you want to mark this 15 as an exhibit? 16 DR. THOMAS: Yes, the second one -- 17 exhibit one. 18 MS. HOLLAND: We'll mark that as 19 exhibit one. 20 (Exhibit No. 1 was marked for 21 identification) 22 THE WITNESS: I think you'll have to 23 rephrase that. It wasn't from Amy Bouno. It was 24 to Amy Bouno.</p>

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<p style="text-align: right;">Page 42</p> <p>1 BY DR. THOMAS:</p> <p>2 Q. I'm sorry, to Amy Buono from yourself, and the 3 subject line being "Comparison of Step 2 Forms." I 4 believe that's CO-1607 and CO-2385?</p> <p>5 A. That's what it looks like. It's also not just 6 to Amy Buono, but Gerry Dillon as well.</p> <p>7 Q. In the third paragraph you start off stating, 8 "The content below, only addresses scored items, and 9 does not include pretest items." The word "content" is 10 what I'm referring to.</p> <p>11 "The Step 2 examination currently has 177 12 different exam content specifications, the examination 13 in 2007, also had 177 (Patient Safety was added since 14 2007, and Heat Related illness was combined with 15 Pituitary, hypothalamic disorders, both of which are 16 under Endocrinology. Thus instead of one item being 17 from both Heat related illness and one from Pituitary 18 and hypothalamic disorders, 1 item is from Heat related 19 illness or one from Pituitary and hypothalamic 20 disorders." Then you go on to say, "Of the 177 21 categories in 2007, specifications changed in 18. . ."</p> <p>22 The question is: Is content categories, and 23 then you label some of the subjects, are they all one 24 and the same, or do you differentiate them to mean</p>	<p style="text-align: right;">Page 44</p> <p>1 categories are organ system-based.</p> <p>2 Q. A little further up you write, "Of the 177 3 categories in 2007, specifications changed in 4 eighteen." Specifications: What do you mean?</p> <p>5 MS. HOLLAND: I'm going to object to 6 the question.</p> <p>7 DR. THOMAS: On what grounds again?</p> <p>8 MS. HOLLAND: For the reasons I stated 9 before.</p> <p>10 BY DR. THOMAS:</p> <p>11 Q. Sir, was this an analysis?</p> <p>12 A. Yes, I was asked to render an opinion.</p> <p>13 Q. Is it an analysis or an opinion?</p> <p>14 A. Well, it was opinion based on analysis of the 15 two examinations.</p> <p>16 Q. Can you define "analysis" for me, please?</p> <p>17 A. I believe it's in the document.</p> <p>18 Q. In your words, what would you consider an 19 analysis?</p> <p>20 A. I already said it: Take the two exams, look 21 at the content between them and how the examination 22 specifications were -- what they were and different 23 other categories, and look to see if the exams looked 24 different or not or comparable.</p>
<p style="text-align: right;">Page 43</p> <p>1 different things?</p> <p>2 A. Part of the content specifications would be 3 organ systems such as endocrine, if that's what you're 4 asking.</p> <p>5 Q. So, to compare the exams, your content is 6 subject matter.</p> <p>7 A. Yes.</p> <p>8 Q. A little further down it says, "Thus, the 9 change in the numbers of content categories. . ."? Do 10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "Thus the change in the number of content 13 categories in which there was a change was 10 (5.6%) 14 for reasons unrelated to timing. Of the 18 content 15 categories where there was a change, 14 of content 16 categories decreased by 1 (6 of these went from 2 in 17 2007 to 1 in 2001; 2 went from 3 to 2; three went from 18 5 to 4; 1 went from 6 to 7 and 1 went from 7 to 8; and 19 there was one content category, Heat Related illness, 20 that was combined with another content area, Pituitary, 21 hypothalamic disorders.)"</p> <p>22 So again, categories, content categories, are 23 they the same or are they different?</p> <p>24 A. I think I've said it before: Content</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Is that a subjective determination based on 2 the person doing the analysis?</p> <p>3 A. To some degree.</p> <p>4 Q. Was any program used to run an analysis?</p> <p>5 A. Yes. It was the -- it's where the numbers got 6 generated from.</p> <p>7 Q. What program would that be?</p> <p>8 A. I'm not sure. Probably involved SPSS, but I'm 9 not sure.</p> <p>10 Q. Who ran the report or who ran the assessment?</p> <p>11 A. I don't remember.</p> <p>12 Q. Who would have entered the information into 13 the program?</p> <p>14 A. It would have been -- I don't know that 15 anybody would have entered it. It's data files.</p> <p>16 Q. Who would have run the data files?</p> <p>17 MS. HOLLAND: Objection, vague.</p> <p>18 Q. Who would be responsible for running the 19 actual analysis of the two exams?</p> <p>20 A. Probably someone in TD or scoring services. 21 Either one would have done it.</p> <p>22 Q. Who would set the parameters to state that the 23 exams were comparable in that program?</p> <p>24 MS. HOLLAND: Objection, vague and/or</p>

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1 calls for confidential information. 2 BY DR. THOMAS: 3 Q. Confidential to say what the parameters are to 4 match a comparable exam? 5 MS. HOLLAND: Vague as to the 6 parameters. I don't understand what you mean. 7 BY DR. THOMAS: 8 Q. When first running a program, you have to set 9 certain standards, yes? 10 A. Depends what you're running it for. 11 Q. If you want to compare two exams through this 12 program -- 13 A. That wasn't what the program did. The program 14 generated the numbers on there. 15 Q. So, the program ran individual numbers, then 16 you as an individual or any of your staff as an 17 individual compared them yourself? 18 A. Correct. 19 Q. And then came up with a determination as to 20 whether or not they would have affected the validation 21 exam? 22 MS. HOLLAND: Objection, vague. 23 Q. Who made the determination between the 24 comparability of these two exams?	1 opinion. 2 Q. It's your opinion. "The changes noted above, 3 more pictures and F types and the inclusion of heart 4 sounds, are changes consistent with the evolution of 5 the exam over four years." 6 Your understanding of the validation exam, 7 should it be comparable to what is current or what was 8 at the time of the examination that's being validated? 9 A. What is current. 10 Q. That's your understanding of the validation 11 exam? 12 A. Yes. 13 Q. If the validation exam is supposed to be 14 comparable to the form that was found to be 15 indeterminate, should the evolution have been in there? 16 A. Yes. 17 Q. So, you're saying that the... 18 A. If you're taking the examination in 2013, it 19 should meet the specifications in the examination of 20 2013. 21 Q. So, let me clarify: The validation exam is 22 supposed to be comparable to the form of 2007. So, my 23 question to you becomes, if that is -- 24 A. It is comparable.
1 A. I did. 2 Q. What did you base that on? 3 A. The information in the email. 4 Q. With your expertise, given the content areas 5 and the changes in the number of questions in these 6 areas, can you determine how much it would have 7 affected a test-taker? 8 MS. HOLLAND: Objection, calls for 9 speculation. 10 DR. THOMAS: He's supposed to be the 11 expert running this. 12 MS. HOLLAND: It's unclear what's meant 13 by "affect on a test-taker" and it's also 14 irrelevant unless you're talking about you. 15 BY MR. THOMAS: 16 Q. Sir, if you could go to the last full 17 paragraph, "Overall"?: 18 A. Okay. 19 Q. "Overall, the 2007 Step 2 for STP2 CO1607 and 20 the 2011 Step 2 for Step 2 CO-2385 are very similar 21 with differences which I would consider minimal." 22 Is that an analytic note there, or is that 23 your opinion based on what you saw? 24 A. It says "I would consider," so it's an	1 Q. So, the evolution... 2 A. Those are minimal changes. If you go back and 3 look at the percentages, they were minimal changes. 4 Q. Minimal based on whose opinion? 5 A. Mine. 6 Q. Can you define "minimal"?: 7 A. I'd probably say less than ten percent. 8 Q. Can you say you're assuming less than ten 9 percent, or you can say with reliability and validity 10 ten percent? 11 A. You're asking my opinion. 12 Q. Yes, I am asking your opinion because you're 13 directly the -- 14 THE WITNESS: Well, can you read back 15 what he just said? 16 (The record was read by the court 17 reporter as requested) 18 THE WITNESS: I don't know what 19 reliability has to do with my opinion on -- you're 20 talking about exact -- yes... 21 BY DR. THOMAS: 22 Q. So, ten percent is an opinion you have. You 23 cannot say for a fact that it is only a ten percent 24 difference between the two exams.

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1 A. Well, I actually can say it's less than that. 2 You have the document in front of you. 3 Q. Could you please tell me exactly how you get 4 to the less than ten percent? 5 A. Well, let's see: "Thus the change in the 6 number of content categories in which there was a 7 change was ten (5.6%) for reasons unrelated to timing. 8 "Of the 18 categories" and there go the numbers on 9 examination of those 288 or 280 questions. 10 Q. So, you're saying that only -- how many 11 questions changed then? 12 A. I said the content categories of 5.6% that 13 were unrelated to timing. 14 Q. So, were there any related to timing? 15 A. It's stated above that. 16 Q. Could you please clarify? 17 A. "The Step 2 examination" -- tell me if I'm 18 going too fast for you -- "in 2007 was 368 items (46 19 per hour) of which 288 items were live; in 2011, the 20 Step 2 examination was 352 items (44 items per hour or 21 42 per hour, if the hour block contained a scientific 22 abstract or pharmaceutical advertisement, the block 23 contained 2 fewer items) of which 280 are live." 24 So, there were a change of -- two times eight	1 MS. HOLLAND: Objection. What's the 2 relevance? 3 DR. THOMAS: I'd like to know how much 4 experience he has in validation exams. Before, he 5 said he didn't even know how validation exams were 6 even run. 7 MS. HOLLAND: How many validation exams 8 -- 9 DR. THOMAS: In the time of his tenure 10 how many has he had been asked to create. 11 MS. HOLLAND: The witness can answer. 12 THE WITNESS: I haven't been asked to 13 create any. It's the similar form to the other 14 hundred exams. 15 We do a hundred different examinations 16 a year, not just USMLE, so we're quite capable of 17 make very similar examinations for whatever 18 reasons it's needed. 19 BY DR. THOMAS: 20 Q. Multiple students were found to have 21 indeterminate scores for their USMLE exams because they 22 attended Optima University, and the multiple students 23 may have taken a validation exam. 24 Would your department have been notified to
1 -- sixteen questions. 2 Q. If there are less questions, is each question 3 worth more? 4 MS. HOLLAND: Objection. 5 Q. In general, if there are less questions on an 6 exam, percentage-wise would one question be worth more? 7 MS. HOLLAND: Objection. 8 DR. THOMAS: I didn't specify to you 9 USMLE. I'm asking him -- 10 MS. HOLLAND: I'm going to instruct the 11 witness not to answer that question. 12 DR. THOMAS: Okay. 13 BY DR. THOMAS: 14 Q. So, this report is based on numbers you got 15 from a report from a program that was run, and it is 16 your opinion that it's comparable. 17 A. Correct. 18 Q. Okay. Was any analysis done on the validation 19 exam with regard to time on each question? 20 A. That data is collected. I don't think there 21 was any analysis done on it. 22 Q. In your tenure as your current position, how 23 many validation exams have you been asked to create for 24 your department?	1 create validation exams for them through your manager? 2 A. Through USMLE they would have been, yes. 3 Q. Do you know of any request coming to your 4 manager during your tenure? 5 A. No others, and I'm not sure I would have 6 remembered this one if it hadn't been for the 7 deposition today. 8 Q. Do you have knowledge of any prior requests 9 for validations for students from Optima University for 10 validation exams to be created? 11 MS. HOLLAND: Objection, asked and 12 answered. 13 BY DR. THOMAS: 14 Q. Is June Farrell still employed in your 15 department? 16 A. Yes, she is. 17 DR. THOMAS: That's all for this 18 witness. 19 MS. HOLLAND: Okay. I do have a few 20 brief questions. 21 (EXAMINATION) 22 BY MS. HOLLAND: 23 Q. Dr. Haist, do you still have the report that 24 you prepared in front of you that's been marked exhibit

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1	one?	1	INDEX
2	A. Yes, ma'am.	2	
3	Q. And can you take a look for me at the last	3	WITNESS: STEPHEN HAIST, M.D., M.S.
4	paragraph of the first page of that report? At the	4	
5	bottom it says NBME 13.	5	By Dr. Thomas: Page 3
6	A. On the front page.	6	
7	Q. On the front page. Do you see the last	7	
8	paragraph?	8	EXHIBITS
9	A. Yes.	9	NO. DESCRIPTION PAGE
10	Q. Can you --	10	1 Email chain, with attachment to A. 41
11	A. Oh, that ends in -- okay.	11	Buono from S. Haist, M.S., M.D.
12	Q. The last paragraph, can you read what you	12	
13	wrote in total?	13	
14	A. "By content specifications, the 2007 to 2011	14	
15	examination were essentially the same (93.8% of the	15	
16	items in 2007 examination were from the same specified	16	
17	content category as items in 2011 examination) and	17	
18	there was only 1 new category (2 items in Patient	18	
19	safety, two subcategories, 1 item in each subcategory).	19	
20	The 93.8% should actually be higher since the number of	20	
21	items on the examination decreased by 8; the adjusted	21	
22	percentage of items that were from the same content	22	
23	category is 96.4%."	23	
24	Q. Okay. And are you testifying today in your	24	
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1	capacity as the vice-president for test development, or	1	CERTIFICATION
2	are you testifying today as an expert witness?	2	
3	A. I assume vice-president for test development.	3	-----
4	MS. HOLLAND: I don't have anything	4	
5	further.	5	I hereby certify that the testimony and
6	DR. THOMAS: That's all.	6	the proceedings in the foregoing matter are contained
7	(The deposition was concluded at 1:00	7	fully and accurately in the stenographic notes taken by
8	p.m.)	8	me and that the copy is a true and correct transcript
9		9	of the same.
10		10	
11		11	
12		12	Lance A. Brusilow
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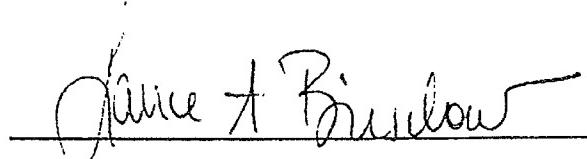
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1 CERTIFICATION
2
3 -----
4

5 I hereby certify that the testimony and
6 the proceedings in the foregoing matter are contained
7 fully and accurately in the stenographic notes taken by
8 me and that the copy is a true and correct transcript
9 of the same.

10
11 
12

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